

IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE  
TWENTY-FIRST JUDICIAL DISTRICT AT FRANKLIN

FILED  
WILLIAMSON COUNTY, TENNESSEE  
2007 OCT 19 AM 8:07

STATE OF TENNESSEE, *ex rel.* )  
ROBERT E. COOPER, JR., ATTORNEY )  
GENERAL and REPORTER, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
ROLAND FROEHLIG, a.k.a. Rollie Froehlig, )  
THEODORE HOWES, a.k.a. Ted Howes, )  
NATIONAL FULFILLMENT, INC., and )  
ENTERTAINMENT AMERICA, INC., )  
 )  
Defendants. )

ENTERED \_\_\_\_\_

No. 33293

JURY DEMAND

**MOTION FOR APPOINTMENT OF RECEIVER FOR CORPORATE DEFENDANTS**

Comes now the State of Tennessee to move this Court pursuant to its equitable authority for the appointment of a receiver to manage and control National Fulfillment, Inc. and Entertainment America, Inc. and, should the receiver, upon approval of this Court, deem it appropriate, liquidate the assets of the company as outlined below. This Motion for Appointment of Receiver For Corporate Defendants is being filed concurrently with a Notice of Suggestion of Death, Motion to Substitute Parties, and Renewed Motion for Asset Freeze.

Defendant Roland Froehlig died September 19, 2007. During life, Defendant Froehlig owned 56% of Defendant National Fulfillment, Inc. National Fulfillment, Inc., in turn, owned 98% of the shares of Defendant Entertainment America. Under the will executed September 17, 2007, Mr. Froehlig's wife is listed as the beneficiary of Mr. Froehlig's shares in National Fulfillment and any other business.

On information and belief, the Corporate Defendants have begun liquidating assets of both companies and stand to receive sizeable assets, including life insurance proceeds, as a result

of Mr. Froehlig's death.

The State, under its lawsuit, stands to be a substantial creditor of both the Corporate Defendants and Mr. Froehlig's estate. This Court, in granting the State's Motion for Temporary Injunction, found that there was a "substantial likelihood of success on the merits" of its claim based on the Identity Theft Deterrence Act, Tenn. Code Ann. § 47-18-2101 *et seq.*

The State submits that a receivership is appropriate in the case:

- (1) for the purpose of preserving the assets of the Corporate Defendants, pending the litigation, for the benefit of the successful party;
- (2) because the Defendants have engaged in fraudulent or other inequitable conduct including violations of the Tennessee Consumer Protection Act and the Identity Theft Deterrence Act;
- (3) because the Defendants have begun to liquidate their assets and cease the operation of the business;
- (4) because a receivership can do no one any particular harm, and may be of great benefit to those entitled to the property or its proceeds;
- (5) because the Plaintiff, State of Tennessee asked quickly once it received notice that Defendants were liquidating their business;
- (6) because of the risk that further dissipation of assets may be difficult to track or obtain at a later date; and
- (7) because this Court has already found the State to have shown "a substantial likelihood of success on the merits" of its identity theft claim.

With these considerations, the State moves that Robert E. Moore, Jr. specifically, whose affidavit is attached as Exhibit A to this Motion, or any other Receiver the Court approves be

granted the authority by this Court to:

A. Manage and operate, or arrange for the management and operation of National Fulfillment, Inc. and its related entities including Entertainment America, Inc.

B. Take exclusive custody, control and possession of all bank accounts, goods, chattels, causes of action, credits, monies, investments, life insurance policies, stocks, shares, effects, books and records of account, other papers and property, and all interests, whether real or personal, tangible or intangible, of whatever type, kind or nature owned or held by the Receivership entity, with the full power to sue for, collect, receive and take possession of such properties and assets, wherever located, and to conserve and administer them under the general supervision of this Court.

C. Take any and all actions reasonably necessary to protect and maximize the assets of National Fulfillment, Inc. and Entertainment America, Inc.

D. Contact all financial, agency, trust, or depository institutions maintaining accounts for or on behalf of the Receivership entity and employ whatever lawful means necessary to secure the funds in these, and any other accounts, for the Receivership, and to amend the signature cards so that only those persons approved by the Receiver shall be permitted to withdraw upon such accounts.

E. Secure from any financial institution where the Receivership entity maintains property or accounts of said Receivership entity, including but limited to bank accounts, all financial information required by the Receiver and said financial institutions shall provide this information to the Receiver.

F. Employ such counsel, accountants, appraisers, managers, clerks, assistants and other persons as deemed necessary. The compensation of the Receiver, counsel, accountants,

appraisers, managers, clerks, assistants and other persons and all expenses of taking possession of the Receivership entity and of conducting the proceeding shall be approved by the Court and shall be paid out of the funds or assets of the Receivership entity and such other funds as deemed appropriate by this Court. The persons appointed under this section shall serve at the pleasure of the Receiver.

G. Make an accounting to the Court no less frequently than quarterly. The report shall include the Receiver's opinion as to the likelihood that additional litigation will be necessary.

H. Take such action as he deems necessary or appropriate to reform and revitalize the Receivership entity. He shall have all the powers of the directors, officers, and managers, whose authority shall be suspended, except as they are delegated by the Receiver. He shall have full power to direct and manage, to hire and discharge employees subject to any contract rights they may have, and to deal with the property and business of the Receivership entity. He shall have power to make such payments and disbursements from the receivership properties and incur such expenses as may be necessary and advisable in discharging his duties as Receiver, or for the proper conduct of any usual and lawful business of the Receivership entity. The Receiver may consult and cooperate with other state and federal authorities who may have jurisdiction over any parts of the property and business of the Receivership entity. In addition, the Receiver shall have any other powers given by state law.

I. Pursue all appropriate legal remedies on behalf of the Receivership entity, including but not limited to the making of criminal referrals to the appropriate state and/or federal authorities/law enforcement agencies if it appears to the Receiver that there has been criminal or tortious conduct, or breach of any contractual or fiduciary obligation detrimental to

the Receivership entity by any officer, manager, agent, broker, employee or other person.

J. Prepare a plan to effectuate the reorganization, consolidation, conversion, merger, dissolution, liquidation or other transformation of the Receivership entity should the Receiver deem it appropriate, provided that the Receiver receives the approval of this Court after notice and a hearing. Any plan approved under this section shall be, in the judgment of the Court, fair and equitable to all parties concerned. The Receiver shall carry out the plan, if approved.

K. Void fraudulent transfers. Every transfer made or suffered and every obligation incurred by the Receivership entity within one (1) year prior to the filing of a successful Petition for Receivership is fraudulent as to then existing and future creditors, if made or incurred without fair consideration, or with actual intent to hinder, delay or defraud either existing or future creditors. Transfers which are considered fraudulent may be voided by the Receiver, except as to a person who is in good faith a purchaser, lienholder, or obligee for a present fair equivalent value, and except that any purchaser, lienholder or obligee, who in good faith has given consideration less than fair for such transfer, lien or obligation, may retain the property, lien or obligation as security for repayment. The Court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the Receivership, and in that event the Receiver shall succeed to and may enforce the rights of the purchaser, lienholder or obligee.

L. That there shall be no complaint, counter-complaint, or similar action initiated or continued against the Receivership entity, the property of the receivership, the Receiver in his official or individual capacity for any actions as receiver in connection with this Receivership otherwise than by appearing in this cause and with the permission of this Court.

M. That any court in this State before which any action or proceeding in which the Receivership entity is a party, or is obligated to defend as a party, is pending when a

Receivership order against the Receivership is entered shall stay the action or proceeding for ninety (90) days and such additional time as is necessary for the Receiver to obtain proper representation and prepare for further proceedings. The Receiver shall take such action respecting the pending litigation as he deems necessary in the interest of justice and for the protection of creditors, investors, consumers, and the public. The Receiver shall immediately consider all litigation pending within and outside this State and shall petition the Courts having jurisdiction over this litigation for stays whenever necessary to protect the estate of Receivership entity.

N. Present to this Court and to all parties to this suit an accounting reflecting the existence and value of all receivership properties, the extent of any liabilities, both those claimed by others to exist and those which the receiver believes to be the legal obligations of the receivership entities, and any further information the receiver believes may assist this Court in the administration of this receivership.

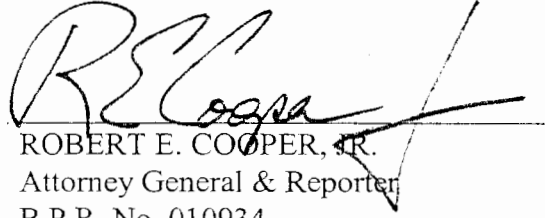
O. That the Receiver shall forthwith file with the Clerk of this Court a bond in an amount to be determined by the court with sureties to be approved by the Court, conditioned that he will well and truly perform the duties of his office and duly account for all monies and properties which may come into his hand and abide by and perform all things which he shall be directed to do.

P. That the Receiver's reasonable and appropriate fees and expenses including those of his counsel and his contractors incurred in his duties as receiver in this matter shall be paid and considered first priority claims on the assets of the receivership estate and paid from those assets.

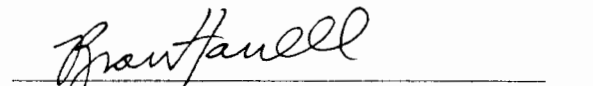
Further, the State moves that all persons, firms, corporations and associations, including

but not limited to Defendants Theodore (“Ted”) Howes, the Estate of Rollie Froehlig or any of its representatives should the Motion to Substitute concurrently filed be granted, National Fulfillment, Inc. and Entertainment America, Inc. and their officers, directors, stockholders, members, subscribers, agents and all other persons in active concert or participation with them, be prohibited and enjoined from the transaction of further business of the Receivership entity; from the waste, transfer or disposition of property of the Receivership entity; from doing any act or thing whatsoever to interfere with the taking control, possession and administration by the Receiver of the receivership properties or to in any way interfere with the Receiver, or to harass or interfere with the Receiver, or to interfere in any manner with the exclusive jurisdiction of this Court over the receivership properties; from the institution or further prosecution of any actions or proceedings, except within this receivership itself; from the making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the Receivership entity; from the withholding from the Receiver of books, accounts, documents or the records relating to the business of the Receivership entity; from any other threatened or contemplated action that might lessen the value of the Receivership entity’s assets or prejudice the rights of investors, creditors or any proceeding under the Receivership; or the obtaining of preferences, judgments, attachments or other liens, or the making of any levy against the Receivership entity or against its assets or any part thereof or from enforcing any lien upon, or taking or attempting to take possession of, or retaining possession of, any receivership property or attempting to foreclose, forfeit, alter or terminate any interests of the Receivership entity, in any property, whether such acts are part of a judicial proceeding or otherwise, until further order of this Court; from accelerating the due date of any obligation or claimed obligation; and that this Court further authorizes the Receiver to apply outside of Tennessee for the relief above described.

Respectfully submitted by:



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**CERTIFICATE OF SERVICE**

I, Brant Harrell, do hereby certify that the foregoing document was sent via

US Mail and Facsimile where available to the following addresses:

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On this the 4<sup>th</sup> day of October, 2007

  
BRANT HARRELL  
Assistant Attorney General